IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

First Appeal No. 859 of 2001
(Old No.848/1993)

Jammu and Kashmir Charitable
Trust, Haridwar ..... Appellant

Versus

The Collector, Saharanpur/Haridwar .....Respondent

Mr. M.S. Pal, learned counsel for the appellant.
Learned Standing Counsel for the respondent.

Hon'ble P.C. Verma, A.C.J.
Hon'ble P.C. Pant, J.

(Delivered by Hon'ble P.C. Pant,J.)

This is an appeal preferred under Section 54 of the land Acquisition Act, 1894 read with Section 96 of Code Civil Procedure, 1908 against the judgment and decree passed on 27.01.1992 by Sri V.S. Shukla, the then learned Ist Additional District Judge, Roorkee in Land Acquisition Case No. 75 of 1985.

2. Brief facts of the case giving rise to this appeal are that a reference was made under Land Acquisition Act, 1894 against the judgment dated 05.01.1982 of Special Land Acquisition Officer, Haridwar regarding compensation on acquisition of the land and building owned by the appellant Trust in GHAT VISHTAR YOGNA, HARIDWAR. The area of the land was 6576 sq. ft. and the Special Land Acquisition Officer assessed the market value of the land at Rs. 20/- per sq. ft. totalling to Rs 1,31,520/- The value of the building standing thereon was assessed at Rs. 1,43,911/- by Special Land Acquisition Officer

By applying the rate of Rs. 315 per sq. mt. As such the Special Land Acquisition Officer gave an award of Rs. 1,31,520/- (for land) and Rs. 1,43,911/- (for building) with solatium of Rs. 41,315/- totaling to Rs. 3,16,745/- against which the reference on the application of the appellant were made to the learned lower court.

3. On the basis of pleadings/ objections, following issues were framed by the learned lower court:

i) Whether compensation awarded is insufficient, if so, what ought to be the amount?

ii) What are the other relief apart from the compensation which the claimants are entitled?

4. After recording the evidence of the parties and hearing them, learned lower court came to the conclusion that the building in question was 150 years old and depreciation of 75% was rightly applied by the Land Acquisition Officer. However, as to the value of the land acquired learned lower court came to the conclusion that the market price of the land acquired was not less than Rs. 40 per sq. ft. and accordingly enhanced the compensation by Rs. 2,68,868/- (i.e. Rs. 1,31,520/- as additional value of land + Rs. 1,37,348/- as additional value assessed of building). Unsatisfied by the award, this appeal has been preferred by the claimants.

5. We heard the learned counsel for the parties and perused the record.

6. From the perusal of the record it is clear that the land in question is situated near Ha-K-Pauri in Haridwar. From evidence on record it is evident that for the land just in front of

the land in question, when acquired, compensation at the rate of Rs. 50 Per sq. ft. was given. This rate of compensation was awarded in the Land Acquisition Compensation Case No. 217 of 1981. Apart from this learned counsel for parties conceded that the circle rate fixed for the purposes of stamp duty by the collector also is not less than Rs. 50/- per sq. ft. as such the compensation awarded to the appellant was not sufficient. Learned Standing Counsel could not show any reason why the land was assessed at a value less than Rs. 50/- per sq. ft. which is admitted marked value for the land opposite to the land in question.

7. As far as value of the building in question is concerned, merely by renovation work it can not be said that it is new building as such the market value assessed at Rs. 2,81,259/- for the building appears to be just and proper.

8. After going thought the entire evidence record, we are of the opinion that the while the building has been rightly assessed at Rs. 2,81,259/-, the land acquired ought to have been assessed at Rs. 50 per sq. ft. as the market vale of the land in the adjoining area has also been assessed at the same rate. As such the compensation awarded for the land ought to have been Rs. 6576 x 50= Rs. 3,28,800/-

9. Accordingly, the appeal deserves to be allowed and is allowed extent that the appellant shall be entitled to the compensation for the land alone to the tune of Rs. 3,28,800/- and Rs. 2,81,259/- for the building. The appellant shall be entitled to 30% solatium and also interest at the rate of 9% from the date of the possession taken by the Collector for one year and thereafter 15% on the amount

which has not been paid by the end of one year of taking of possession (as provided under Section 28 of Land Acquisition Act, 1984). The amount already paid shall be adjusted accordingly. For rest of the amount the appeal shall stand dismissed.

(P.C. Pant, J.) **(P.C. Verma, A.C.J.)**

Dt. 12.07.2004
H. Negi